

THE HON'BLE MS.JUSTICE G.ROHINI

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WRIT PETITION NO.11964 OF 2007

Between:

Mandava Jayaramarao

.....Petitioner

Vs.

- 1) The Regional Joint Commissioner, Multi Zone-1, Endowments Department, Kakinada
- 2) Assistant Commissioner, Endowments Department, Vijayawada
- 3) Executive Officer, Sri Durga Malleswara Swamy Varla Devasthanam, Indrakeeladri, Vijayawada.

.....Respondents.

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THE HON'BLE MS.JUSTICE G.ROHINI

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WRIT PETITION NO.11964 OF 2007

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ORDER:
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The petitioner claims to be the cultivating tenant of Sri Durga Malleswara Swamy Varla Devasthanams, Vijayawada, to an extent of Ac 0.77 cents of land situated in R.S.No.17/1 AB of Enikepadu Village, hamlet of Vijayawada, Krishna District.

It is stated that the third respondent-Executive Officer issued a notice under Rule 5 (1) of the Rules made under G.O.Ms.No.379, dated 11.03.2003 stating that the lease held by the petitioner stood cancelled and calling upon him to handover possession of the lands in his occupation. Having received the same, the petitioner made an application before the second respondent-Assistant Commissioner of Endowments, claiming that he is a landless poor and therefore,

entitled to the benefit of Section 82 (2) of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 (For short' the Endowments Act') 30/1987. After due enquiry, the second respondent by proceedings, dated 05.11.2003 declared the petitioner as a landless poor person. The said order was communicated to the Commissioner of Endowments by the third respondent and pursuant thereto, the Commissioner of Endowments vide proceedings, dated 08.01.2004 directed the Executive Officer to obtain the willingness of the petitioner to purchase the said land in accordance with Section 82 (2) of the Act. There after, the petitioner was served with notice in Form-II, dated 27.01.2004 under Sub-Rule (2) of Rule 5 of the Rules, calling upon him to exercise his option either to purchase the land or to continue as a tenant on payment of 2/3rd of the market rent. The petitioner informed the third respondent that he is willing to purchase the land on payment of price in four equal monthly instalments and the same was forward to the first respondent on 30.01.2004 itself. However, in spite of repeated representations made by the petitioner, the first respondent failed to pass any order.

In the circumstances, the petitioner filed W.P.No.21838 of 2005 seeking a declaration that the action of the respondents in not completing the sale transaction as arbitrary and illegal. This Court by order, dated 07.10.2005 issued a direction to the Commissioner of Endowments to take appropriate decision on the report of the

Executive Officer, dated 30.01.2004 within a period of four weeks. While so, the third respondent preferred an appeal before the Regional Joint Commissioner (respondent No.1 herein) questioning the order passed by the Assistant Commissioner of Endowments, dated 05.11.2003 with a delay of about three years. Though the petitioner contested the application to condone the inordinate delay in filing the appeal, the first respondent having condoned the delay, proceeded to decide the appeal on merits. Ultimately, after hearing both the parties, by order dated 20.03.2007, the first respondent allowed the appeal and set aside the order of the Assistant Commissioner, dated 05.11.2003, under which, the petitioner was declared as a landless poor person. Hence, this writ petition seeking a writ of Certiorari to call for the records relating to the order of the first respondent, dated 20.03.2007 and to quash the same.

Heard the learned counsel for the petitioner and perused the material on record.

At the outset, it is to be noted that even according to the petitioner, he was granted a lease in the year 1997 in a public auction conducted for grant of leasehold rights under the provisions of Act 30 of 1987. The lease was valid for a period of three years and further continuation of lease was approved by the competent authority upto 2004-2005. Nothing has been placed before this Court to show that after 2005-2006, any further lease has been granted in favour of the petitioner. In

the circumstances, the second respondent held that the petitioner should be treated as an un-authorised occupant and the mere fact that he is depositing the rents, which were received by the Executive Officer, cannot be a ground to hold that he is lawfully cultivating the lands. Thus, it was concluded that being an unlawful occupier, the petitioner is not entitled to the benefits under Section 82 (2) of the Act.

It is relevant to note that Section 82 (2) of the Act provided for certain benefits in favour of a landless poor person, who was holding the lease of agricultural lands on the date of commencement of the Endowments Act 30 of 1987. It is also necessary that such landless poor person should be a lessee for not less than six years continuously.

In the case on hand, it is not in dispute that the petitioner was not holding a lease by the date of commencement of the Act i.e., 23.05.1987. Admittedly, the petitioner was granted lease only in the year 1997, being the successful bidder in the public auction. Thus, the mere fact that the petitioner is holding a small extent of 77 cents of wet land, i.e., less than the limits prescribed under the Explanation to Section 82 (2) of the Act is immaterial. The Assistant Commissioner of Endowments has apparently failed to apply his mind to the requirements of Section 82 (2) of the Act while declaring the petitioner as a landless poor person. Hence, the declaration made by the Assistant Commissioner of Endowments, dated 05.11.2003 being

erroneous and contrary to the mandatory provisions of the Act, the first respondent has rightly set aside the same while allowing the appeal. The said order, which does not suffer from any infirmity warrants no interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India.

Accordingly, the writ petition is dismissed. No order as to costs.

G.ROHINI J.,

Dt.12. 06.2007

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